

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION PANEL
AT KNOXVILLE

FILED

May 2, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STANLEY BAILEY,
Plaintiff/Appellant

v.

AMRE, INC.,
Defendant/Appellee

CAMPBELL CHANCERY

Hon. Billy Joe White
Chancellor

NO. 03S01-9511-CH-00124
(No. 13,274 Below)

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice Penny J. White
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED

INMAN, Senior Judge

_____This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with TENN. CODE ANN. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The Chancellor held “. . . really all I can do is find that the medical proof does not bear out a finding of permanent disability,” and this action for workers' compensation benefits was thereupon dismissed, the propriety of which is presented for our review, which is *de novo* on the record accompanied by a presumption that the findings of fact of the trial court are correct unless the evidence otherwise preponderates. TENN. CODE ANN. § 50-6-225(e)(2). We affirm.

The plaintiff sustained an accidental job-related injury to his back on November 1, 1992 while carrying a “walking board” from a step-ladder to a truck. Later, in May 1993, while burning trash at home, he suffered another back injury, non work-related, resulting in “severe exacerbation of increased low back pain and pain going down both legs.” Dr. David Hauge, orthopedic specialist, examined the plaintiff on April 27, 1993. He testified that the plaintiff had degenerative disc disease with associated congenital lumbar stenosis at L2-3 and L3-4, together with a bilateral disc protrusion at L4-5 on the left, and advised therapy with probable surgery which was later performed by another surgeon. On May 11, the plaintiff returned to Dr. Hauge, stating that he had re-injured his back while burning trash at his home.

Because Dr. Hauge had not seen the plaintiff in fifteen months, he had no independent recollection of him and, therefore, based his opinions on office notes, which initially did not refresh his recollection. He indulged various presumptions and speculated at length about physical impairment in response to questions propounded to him; with respect to degenerative disc disease and lumbar stresses, he testified that “they might be work-exacerbated. They would not be work-related.”

He went on to say that the disc herniation was not work-related and declined to apportion any impairment between the successive injuries.

Dr. Fred A. Killeffer, neurosurgeon, examined the plaintiff on November 5, 1993. Apart from his examination, he utilized the various medical records amassed by other treating physicians, viz, Drs. Fardon, Bishop, Bailey, Hauge, Burrell, Cohn and the medical records from Fort Sanders Park West and La Follette Medical Center. He testified that, in his opinion, the plaintiff had no impairment resulting from the November 1992 injury. No other expert testified.

Excepting unusual instances, causation and permanency of a work-related injury must be proved by expert evidence, which cannot rest on speculation or supposition, *Tindall V. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987).

We share the Chancellor's frustration; we cannot determine, in accordance with established principles, whether the plaintiff suffered any permanent impairment following the job-related accident and are not at liberty to speculate or substitute our judgment for that of the Chancellor. In any event, we cannot find that the evidence preponderates against the judgment which is affirmed at the cost of the appellant.

William H. Inman, Senior Judge

CONCUR:

Penny J. White, Justice

Joe C. Loser, Judge